



An Energy Efficiency Workshop & Exposition
Kansas City, Missouri

***Welcome to the Big Picture/Keeping up
with the Jones***

Legislative Background



Legislative History

- Shared Energy Savings (1985)
- National Energy Policy Act [NEPCA] (1988)
 - Primary Legislation
- Energy Policy Act [EPACT] (1992)
[Update and Revised in 1995]
 - Amended NEPCA; Added Specific Goals



Legislative History continued

- Executive Order 13123 (1999)
 - Additional Requirements EPACT
- DOE ESPC Rule (1995)
 - Takes Precedence Over FAR
 - Create DOE Qualified List of ESCOS
 - Allows Unsolicited Proposals
 - Specifies Procurement Procedures and Basis for Selection of ESCOs



Legislative History continued

- DoD Specific
 - 10 USC 2865 Energy Savings at Military Installations
 - Defense Energy Program Policy Memorandum (DEPPM) 94-1 Utility Programs
 - Defense Energy Program Policy Memorandum (DEPPM) 94-2 ESPC



Legislation

- o So what does NEPCA currently look like?



NEPCA as Modified by EPACT

- National Energy Conservation Policy Act, Title VIII, Sections 801 to 804
- Energy Savings Performance Contracts
- 42 USC § 8287
- **Sec. 801. Authority to Enter into Contracts.** [42 USC § 8287]
- (a) In General. (1) The head of a Federal agency may enter into contracts under this title solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.
- (2)(A) Contracts under this title shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.
- (B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.
- (C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.
- (D) A Federal agency may enter into a multiyear contract under this title for a period not to exceed 25 years, without funding of cancellation charges before cancellation, if-
 - (i) such contract was awarded in a competitive manner pursuant to subsection (b)(2), using procedures and methods established under this title;
 - (ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year;
 - (iii) 30 days before the award of any such contract that contains a clause setting forth a cancellation ceiling in excess of \$750,000, the head of such agency gives written notification of such proposed contract and of the proposed cancellation ceiling for such contract to the appropriate authorizing and appropriating committees of the Congress; and
 - (iv) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) or the applicable rules promulgated under this title.
- (b) Implementation. (1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act, not later than 180 days after the date of the enactment of the Energy Policy Act of 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.
- (B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.(2) The procedures and methods established pursuant to paragraph (1)(A) shall-
 - (A) allow the Secretary to-
 - (i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and
 - (ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;



NEPCA as Modified by EPACT

- Section 543 Energy Management Requirements
 - 20% by 2000 relative to use in 1985
 - Currently 35% by 2010 EO 13123
- Section 544 Life Cycle Cost
- Section 546 Incentives Non DoDAgencies
 - Authorizes use of utility incentive programs
 - 50% of energy and water savings
 - Institutes financial award program - facility managers
- Section 547 Interagency Energy Task Force
- Section 548 Reports



NEPCA as Modified by EPACT

- Section 549 New technology demo
- Section 550 Survey buildings



NEPCA as Modified by EPACT

- Section 801
 - Any Federal agency can issue contracts for energy saving and ancillary benefits
 - Contracts not to exceed 25 years
 - Contractor pays up front and is paid from savings
 - Agency must have first year payments
 - Requires performance guarantee
 - Agency must inform congress if cancellation fee exceeds \$10 million.
 - DOE responsible for rule,
 - rule developed in conjunction with FAR Council takes precedence over FAR
 - Establishes sunset provision – 30 September 2003



NEPCA as Modified by EPACT

- Section 802
 - Establishes rules on payments to contractor
 - Funds must be utility or related O&M
- Section 803
 - Establishes reporting requirements for other agencies to DOE
- Section 804
 - Definitions



Other EPACT Requirements

- Section 153 and 154 GSA buildings fund and reports
- Section 156 Conference workshops
- Section 157 Energy manager training
- Section 158 Energy audit teams
- Section 159 Energy cost accounting
- Section 160 IG audits
- Section 161 Energy efficient products



Other EPACT Requirements

- Section 163-6 Postal Service
- Section 167 Government Contract Incentives
- Section 168 Architect of the Capitol



- Can Federal agencies take advantage of programs offered by their servicing utilities to save energy?
- What are the current energy savings goals?
- What documents establish them?
- Does the DOE rule on ESPCs take precedence over the FAR? Why?



- ESPC contracts can be awarded for up to how many years?
- Do ESPCs require a performance guarantee?
- Do utility incentive contracts require a performance guarantee?
- Can ESPCs be paid for from capital funds?



Proposed Actions

- Two bills in the Senate
 - Both allow for new building that replaces existing buildings
 - One extends sunset to 2008
 - One repels sunset and explicitly adds water
- DOE rule being rewritten